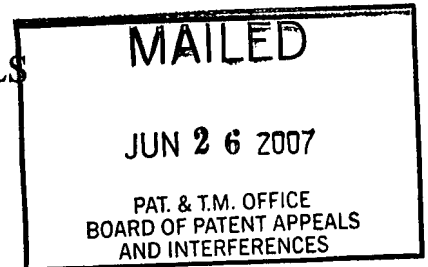


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte CHRISTOPHER J. EDGE and TIMOTHY A. FISCHER

Application No. 09/778,704

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 22, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing is identified below.

On November 22, 2005, the examiner mailed an examiner's answer. In the Evidence Relied Upon section, paragraph (8), the examiner stated that

“No evidence is relied upon by the examiner in the rejection of the claims under appeal.” A review of the file reveals that various references were applied to the statement of rejections in the Grounds of Rejection section, paragraph (9), of the examiner’s answer.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Additionally, a review of the application reveals that the Evidence appendix and the Related proceedings appendix sections are missing from the appeal brief filed August 29, 2005. Therefore, the appeal brief does not fully comply with all the requirements of 37 C.F.R. § 41.37(c).

According to MPEP § 1205.03, in part,

(A) If the evidence appendix and related proceedings appendix are missing, but the record is clear that there is no evidence submitted and no related proceedings listed in the related appeals and interferences section, the examiner may accept the brief and state in the examiner’s answer that it is assumed that the appellant meant to include both appendixes with a statement of “NONE.”

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer;
- 2) clarify for the record the missing evidence and related proceedings appendix; and,
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

BY: Patrick J. Nolan

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